

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Jurisdictional Separations Reform and)	CC Docket No. 80-286
Referral to the Federal-State Joint Board)	

COMMENTS

BellSouth Corporation and BellSouth Telecommunications Inc. ("BellSouth") hereby submit their Comments on the State Members of the Federal-State Joint Board's ("State Members") *Glide Path Policy Paper* describing a number of proposed options for comprehensive reform of the Commission's Part 36 jurisdictional separations rules.¹

I. THE ULTIMATE CONCLUSION OF SEPARATIONS REFORM SHOULD BE THE ELIMINATION OF A FORMAL JURISDICTIONAL SEPARATIONS PROCESS.

BellSouth commends the work of the State Members in their thought-provoking *Glide Path Policy Paper*. By considering a range of possible options, by comparing the advantages and disadvantages of each, and by providing salient background on the history and purpose of separations, the State Members have made the case that separations constitute, as this Commission has noted, one of a number of "outdated regulatory mechanisms that are out of step with today's rapidly-evolving telecommunications marketplace."² Indeed, as the United States

¹ "Options for Separations: A Paper Prepared by the State Members of the Separations Joint Board," CC Docket No. 80-286 (filed Dec. 19, 2001) ("*Glide Path Policy Paper*").

² *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, *Report and Order*, 16 FCC Rcd 11382, 11383, ¶ 1 (2001) ("*Report and Order*").

Telecommunications Association observed earlier in this proceeding, “the long-term goal should be to eliminate separations.”³ Because price cap carriers do not use separations to establish prices,⁴ or to improve service quality, separations are incompatible with a competitive market.⁵ The elimination of jurisdictional separations is the best way to both simplify complex requirements and to remove regulatory uncertainty, and it is the clear direction in which the Commission should proceed.

However, five of the State Members’ proposed “options,” specifically Options 2 through 6, are fundamentally inconsistent with the *Report and Order*’s stated goal to “bring simplification and regulatory certainty to the separations process in a time of rapid market and technology changes until reform is completed,”⁶ because they would impose unnecessary and asymmetrical regulatory burdens on incumbent local exchange carriers. These options either do not anticipate or contemplate the end of separations, or simply beg the question of whether separations should be eliminated. The disadvantages outlined for each option by the State Members underscore their complexity and incompatibility with the total elimination of an irrelevant regulatory requirement, which is the ultimate separations reform.

³ The United States Telecom Association’s Comments Regarding the *Recommended Decision* Issued by the Federal-State Joint Board on Jurisdictional Separations at 8 (filed Sept. 25, 2000) (“USTA Comments”).

⁴ Nor do separations impact the pricing of unbundled network elements (“UNEs”).

⁵ USTA Comments at 8.

⁶ *Report and Order*, 16 FCC Rcd at 11384, ¶ 2.

II. THE COMMISSION SHOULD MAINTAIN THE CURRENT SEPARATIONS FREEZE UNTIL SEPARATIONS CAN BE ELIMINATED.

Option #7, “End of Separations – Competition Overtakes Regulation” ought to be, if not the actual “glide path,” the ultimate goal of this proceeding.⁷ If the Commission has not abolished separations altogether by June 30, 2006, it should adopt Option #1, “Extend the Freeze.” The advantages of separations abolition as outlined by the State Members (competitive neutrality, the elimination of separations studies and reporting, and technological neutrality) far outweigh the “disadvantages” that they also identify in the *Glide Path Policy Paper*.⁸

The State Members describe abolition, as one “disadvantage” of Option #7, in terms of a “[r]educ[ed] ability to use regulated rates to pursue societal goals.”⁹ However, the elimination of jurisdictional separations does not eliminate the power of state or federal regulators to pursue the broad policy objectives expressly authorized by state and federal statute through their expressly delegated powers. Thus, this “disadvantage” should be given very little weight. In fact, eliminating unnecessary and irrelevant regulatory requirements is wholly consistent and compatible with the deregulatory goals of the Telecommunications Act of 1996.

Another State Member-identified “disadvantage” of Option #7, “[d]etermining the conditions under which a carrier may opt out of rate regulation,” may or may not prove to be as

⁷ Option #6, though entitled “End of Separations,” nevertheless is unnecessarily complex as a result of the disadvantages outlined by the State Members in assigning complete regulatory pricing responsibility to one jurisdiction or the other.

⁸ *Glide Path Policy Paper* at 25-26.

⁹ *Id.* at 26.

“controversial and time-consuming” as the State Members indicate.¹⁰ However, the remaining four years of the current freeze provide ample time to consider this issue and resolve any controversies. Thus, this is an insufficient basis to delay the abolition of separations for price-cap carriers. Finally, the State Members’ statement that separations abolition “[r]equires a degree of competition that does not yet exist in the general telecommunications marketplace” is certainly incorrect.¹¹ Ushered in emphatically by new state and federal laws in the mid-1990s, competition in the telecommunications markets indeed exists, is increasing annually, and is in fact inhibited by the asymmetrical application of outdated rules promulgated in a pre-competition regulatory paradigm.¹² Regulatory forbearance at the state and federal levels is a concomitant of competition, and with regulatory forbearance, the need for jurisdictional separations is eliminated.¹³

The current freeze has benefited ILECs by its simplicity and predictability, while maintaining, at the same time, a reasonable delineation of federal and state jurisdictional responsibilities. This is likely to be borne out in forthcoming ARMIS reporting for year 2001 and subsequent years. BellSouth thus far is saving approximately \$750,000 in annual loaded labor and system-related costs as a result of the separations freeze. Implementing any of the re-regulatory options outlined in Options 2 through 6 as a “glide path” will require, to varying degrees, increased staffing and expense, including the costs of modifying separations systems, and is incompatible with an ultimate goal of abolishing separations.

¹⁰ *Id.*

¹¹ *Id.*

¹² See “Local Telephone Competition: Status as of December 31, 2000,” Industry Analysis Division, Common Carrier Bureau, FCC (May, 2001); “Local Telephone Competition: Status as of June 30, 2000,” Industry Analysis Division, Common Carrier Bureau, FCC (Dec., 2000).

¹³ BellSouth Reply Comments at 2 (filed April 14, 1999).

III. CONCLUSION

The current freeze will contribute to the Commission's long-term objective of establishing a competitive telecommunications marketplace unencumbered by costly and unnecessary regulations. The simplicity and predictability associated with the current freeze are in fact the appropriate “glide path” to the ultimate completion of separations reform – the total elimination of jurisdictional separations as outlined by the State Members in Option #7. To the extent that the total elimination of jurisdictional separations cannot be completed on or before June 30, 2006, the current freeze should be extended annually as described in Option #1 until jurisdictional separations are eliminated. Accordingly, BellSouth urges the Commission to reject re-regulatory Options 2 through 6 as outlined in the *Glide Path Policy Paper*, and maintain the current freeze only for as long as it takes to eliminate jurisdictional separations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 22nd day of January 2002 served the following parties to this action with a copy of the foregoing **COMMENTS** by electronic filing and/or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

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